

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT, LIVE OAK SCHOOL
DISTRICT AND CYPRESS CHARTER
SCHOOL.

OAH CASE NO. 2010120551

ORDER DENYING MOTION TO
AMEND COMPLAINT

On December 15, 2010, Student filed a Due Process Hearing Request (complaint) against the Fairfield Suisun Unified School District (FSUSD), Live Oak School District (LOSD) and Cypress Charter School (CCS). On January 5, 2011, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). FSUSD and LOSD filed a non-opposition to Student's Motion to Amend. Student did not serve a copy of the amended complaint on CCS.

APPLICABLE LAW and DISCUSSION

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i)(II).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§ 1415(f)(1)(B).)

The Individuals with Disabilities Education Improvement Act (§ 1400, et. seq.) provides that a party may not have a due process hearing until the notice of a due process hearing request meets the specifications listed in section 1415(b)(7)(A). (§ 1415(b)(7)(B).) Further, section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

¹ All statutory citations are to title 20 United States Code unless otherwise indicated.

A public education agency involved in any decisions regarding a student is a proper party to a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

Student's motion to amend the complaint is timely and FSUSD and LOSD do not oppose the request. However, no explanation is given why Student did not serve a copy of the amended complaint on CCS, even though separately named as a party in the complaint and amended complaint. Neither the complaint nor the amended complaint explain whether CCS is a separate party to this action, or if the chartering school district, LOSD, and CCS are one and the same responsible public education agency. Therefore, the motion to amend is denied. All previously set dates shall remain on calendar.

IT IS SO ORDERED.

Dated: January 6, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings